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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/797,857

03/10/2004

Matthew A. Fordham

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32097 7590 12/18/2008  
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EXAMINER

KIM, PAUL

ART UNIT

PAPER NUMBER

2169

MAIL DATE

DELIVERY MODE

12/18/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* MATTHEW A. FORDHAM

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Application No. 10/797,857  
Technology Center 2100

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Mailed: December 18, 2008

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Before PAMELA S. BENNETT, *Review Team Paralegal*  
BENNETT, *Review Team Paralegal*.

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER

This application was electronically received by the Board of Patent Appeals and Interferences on November 21, 2008. A review of the application revealed that it is not ready for docketing as an appeal. Accordingly, the application is herewith being returned to the Examiner to address the following matters requiring attention prior to docketing.

**EXAMINER'S ANSWER, EVIDENCE RELIED UPON**

Section §1207.02 of the *Manual of Patent Examining Procedure* (MPEP) (Eighth Edition, Rev. 6, September 2007) states:

(A) CONTENT REQUIREMENTS FOR EXAMINER'S

ANSWER. The examiner's answer is required to include, under appropriate headings, in the order indicated, the following items:

. . . .

- (8) Evidence Relied Upon. A listing of the evidence relied on (e.g., patents, publications, admitted prior art), and in the case of nonpatent references, the relevant page or pages.

The Examiner's Answer mailed March 17, 2008 is deficient because the "Evidence Relied Upon" section fails to include the Sullivan reference cited on page 6 in the Examiner's Answer's grounds of rejection of claim 5 under 35 U.S.C. § 103(a).

Appropriate correction is required.

**AMENDMENT AND RESPONSE FOR REOPENING  
PROSECUTION under 37 CFR § 41.39(2)(b)(1)**

On May 16, 2008, Appellant filed a Reply Brief and a paper entitled "Amendment and Response for re-opening prosecution under 37 CFR § 41.39(2)(b)(1)." While the Reply Brief was considered by the examiner on May 22, 2008, there is no indication on the record that the Examiner has

considered the above “Amendment and Response for re-opening prosecution under 37 CFR § 41.39(2)(b)(1).”

### **CONCLUSION**

Accordingly, it is **ORDERED** that the application is returned to the Examiner:

- 1) to issue a PTO-90 citing the missing reference listed under the Evidence Relied Upon section, paragraph (8); and
- 2) to consider the “Amendment and Response for re-opening prosecution under 37 CFR § 41.39(2)(b)(1)” filed on May 16, 2008; and
- 3) for such further action as may be required.

If there are any questions pertaining to this Order, please contact the Board of Patent Appeals and Interferences at 571-272-9797.

PSB

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